THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 1835 of 2003

Oral order:

The petitioner is an industry. For the purpose of manufacturing Lead, Acid, Battery Plates, etc., the petitioner made a request to the respondents for supply of power under Category-III LT supply. Responding to the said request, the respondents entered into an agreement with the petitioner for supply of power. In pursuance of the said agreement, the respondent supplied power to the petitioner from 02.04.1996. The petitioner also paid the power bills as raised by the respondents from time to time.

While so, the 3rd respondent issued notice dated 19.02.2001 informing the petitioner that on 23.01.2001 the DE/SPE, Mahaboobnagar, upon inspection of the premises found that the petitioner was being supplied power under Category-III, while he was being billed for power under Category-IV, and since it was a case of wrong billing, they proposed to backbill the petitioner under Category-III from the date of power supply i.e. 02.04.1996, and accordingly, he called upon the petitioner to explain as to why backbilling amount to the tune of Rs.76,231/- shall not be recovered from him. The petitioner submitted his reply to the show cause notice on 02.03.2001. However, the 2nd respondent issued proceedings 23.10.2002 backbilling the petitioner under Category-III from 02.04.1996 to 23.01.2001. Thereafter, the 1st respondent issued the demand notice dated 01.01.2003.

Hence, the petitioner filed the present writ petition, assailing the notice dated 19.02.2001, issued by the 3rd respondent, the

proceedings dated 23.10.2002 of the 2nd respondent and the consequential demand notice dated 01.01.2003, issued by the 1st respondent, as illegal and arbitrary.

The learned counsel for the petitioner submitted that the petitioner did not obtain the power connection by fraud or misrepresentation, and as requested by him, the respondents have supplied him power under Category-IV, and raised the bills, which he paid promptly. He submitted that he came to know about the wrong billing under Category-III instead of under Category-IV only when the 3rd respondent issued the notice dated 19.02.2001 calling upon him to explain as to why he should not be backbilled for the wrong billing made by them. He submits that since he has neither committed theft of energy nor committed any pilferage, and having regard to the fact that it is case of wrong billing by the respondents themselves, he requested the respondent not to backbill him, but the 2nd respondent without considering the said aspect, issued proceedings dated 23.10.2002 backbilling him under Category-IV for the period from 02.04.1996 to 23.01.2001, and consequently impugned demand notice dated 01.01.2003, was issued by the 1st respondent, which is illegal and arbitrary. Hence, he prayed for appropriate directions to the respondents.

On the other hand, the learned Standing Counsel for the respondents reiterating the counter averments submitted that the petitioner was supplied power under Category IV, and since he was wrongly billed under Category III, the respondents having found the same on inspection, having regard to Condition No. 35 of the Revised Terms and Conditions of Supply of Electricity, which provides that where a consumer has been classified under a particular category and

is billed accordingly, and it is subsequently observed that the classification is not correct, the Board may alter the classification and suitably revise the bills if necessary even retrospectively, have backbilled the petitioner, and no exception can be taken thereto.

Refuting this contention of the respondents, the learned counsel for the petitioner submitted that even though the respondents contend that it is a case of wrong billing, but any revision of bills subsequently, should be made within a reasonable time. He submitted that the petitioner has not committed theft or pilferage of energy, and even then the respondents are seeking to backbill him from the date of power supply, which is illegal and arbitrary, and more particularly when even in respect of malpractices, including pilferage of energy, under Condition No. 39.7.1 of the Revised Terms and Conditions of Supply of Electricity, the assessment shall be made for the estimated period of malpractice subject to a maximum period of one year prior to the date of inspection. Hence, he submitted that the backbilling in his case, shall not exceed one year, and more so when he is not responsible for the wrong billing. He submitted that except the amount under the impugned demand, the petitioner is paying the bills regularly without any default.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

The petitioner, admittedly, applied for supply of power under Category-IV, which the respondents supplied in terms of the agreement entered into from 02.04.1996. Since then the petitioner has been paying the bills as raised by the respondents from time to time for the power consumed. However, on noticing that they have billed the petitioner wrongly under Category III instead of Category IV, they sought to back bill the petitioner under Category IV. In the absence of

any theft or pilferage of energy committed by the petitioner, it may be noticed whether the respondents are justified in backbilling the petitioner from the date of power supply, and more so when even in case of malpractices involving pilferage and theft of energy, the backbilling is not to exceed more than one year.

Condition No. 35 of the Revised Terms and Conditions of Supply of Electricity deals with reclassification of consumer and revision of bills, and it is in exercise of this power, the respondents reclassified the petitioner and sought to revise the bills from the date of power supply. The said Condition reads thus:

35. Reclassification of consumer and revision of bills: Where a consumer has been classified under a particular category and is billed accordingly and it is subsequently observed that the classification is not correct. The Board may alter the classification and suitably revise the bills if necessary even retrospectively.

Admittedly, the power supplied to the petitioner by the respondents was classified under Category IV, however on inspection they found that the petitioner was being supplied power under Category III, and therefore, they reclassified him under Category IV and sought to backbill from the date of power supply. The petitioner contends that he is not aware as to whether he was categorized under Category IV, but was being billed under Category III, he however, contends that he has been paying the bills regularly, which the respondents admit. Though the above condition gives power to the Board to alter the classification and suitably revise the bills if necessary even retrospectively if it is found that the classification is not correct, yet it may be noticed whether the respondents can be permitted to revise the bills retrospectively, and more so when the respondents found the classification to be wrongly belatedly i.e. nearly after expiry of five years. Admittedly, the respondents did not issue any notice to the petitioner calling upon him as to why he should not

be reclassified. However, they issued impugned notice calling upon him to show cause as to why he should not be backbilled for the wrong billing. However, in the counter, the respondents contend that since the petitioner is utilizing the power for running an industry, he has to be classified under Category-IV. The petitioner, admittedly, while obtaining power supply did not suppress the facts. He applied for power supply to the respondents for running an industry, and the respondents having regard to the fact that the petitioner applied for power supply for running an industry, they should have classified under the said category. Thus it is clear that there is no fault of the petitioner in obtaining the power supply, and the mistake if any, is on the part of the respondents in wrong billing the petitioner. The ground on which the respondents are seeking to backbill the petitioner is not for any malpractice involving theft or pilferage of energy, but for their own fault in wrong billing the petitioner. Condition No. 39.7.1 of the Revised Terms and Conditions of Supply of Electricity, provides that in the case of malpractice of supply of electricity to any service which is disconnected or illegal restoration of supply to the consumer's own disconnected premises where the electricity consumed is metered the entire consumption during the estimated period of malpractice shall be charged at the special rates, and the assessment in such cases, shall be made for the estimated period of malpractice subject to a maximum period of one year prior to the date of inspection. Thus from Condition No.39.7.1 Revised Terms and Conditions of Supply of Electricity, it is clear shows that even in the case of malpractice, the assessment shall be subject to a maximum period of one year prior to the date of inspection. The case of the petitioner stands on a better footing than the person who is involved in malpractices. When a person, who is involved in malpractices is assessed subject to a

maximum period of one year prior to the date of inspection, I fail to understand how the respondents for their own fault of wrong billing could backbill the petitioner from the date of power supply, and more particularly, when the involvement of the petitioner in the classification is nowhere.

In the above view of the matter, I deem it appropriate to dispose of the writ petition with the following directions:

The impugned demand notice is set aside. Since the petitioner is not responsible for the wrong billing, the respondents are directed to assess and backbill the petitioner under Category IV instead of under Category III subject to a maximum period of one year prior to the date of inspection, as is being assessed in the case of malpractices.

Accordingly, the writ petition is allowed. No costs.

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N.V. RAMANA, J.

Dated: 11th July, 2007.
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